

P/15/368/OUT

JRT, MARDAN (STEVENAGE) LTD C/O C2J ARCHITECTS UNIT 1A COMPASS
BUSINESS PARK PACIFIC ROAD OCEAN PARK CARDIFF

**LAND AT PARC EWENNI EWENNY INDUSTRIAL ESTATE BRIDGEND
CONSTRUCTION OF UP TO 240 RESIDENTIAL UNITS, 1123 SQ. METRES OF
A1/A2/A3/D1/D2 DEVELOPMENT, PUBLIC OPEN SPACE AND HIGHWAY
WORKS**

Members will recall that an item relating to a proposal to revise the Heads of Terms proposed to be included within a Section 106 Agreement to facilitate the above mentioned development was considered by Committee on 6th July, 2017. Consideration of the matter was deferred so that further clarification could be obtained in respect of the acceptability of the reduction of the amount of educational contribution for the site proposed in the revised Heads of Terms. Reproduced below is the original report to Committee including clarification of the proposed education provision to serve the development site requested by Members.

"The above mentioned application was considered by the Development Control Committee held on 7th January, 2016 when it was resolved that outline planning permission would be granted, subject to the applicant entering into a Section 106 Agreement to :-

1. Provide 20% of the residential units as affordable housing units in accordance with the Authority's adopted Supplementary Planning Guidance 13 with the type of units, location within the site, affordable tenure, transfer price and timescale for the transfer to a Registered Social Landlord agreed with the Council.
2. Provide a financial contribution in accordance with the formula and cost guidance contained in Supplementary Planning Guidance 16 towards the provision of additional nursery and primary school places in the school(s) identified as serving the Parc Afon Ewenni Regeneration site.
3. Provide outdoor recreation space in accordance with Policy COM11 of the LDP with arrangements for future management and maintenance to be agreed in writing with the Council.
4. Provide £8,000.00 to fund necessary Road Traffic Orders and signage to achieve appropriate speed restrictions within the development site.
5. Either provide a financial contribution of £475,793.25 to cover the cost of the provision of an active travel route from the application site to the signalised junction of the A473 with the Bridgend Retail Park or alternatively provide the route in accordance with a scheme agreed with the Local Planning Authority in conjunction with the Highway Authority.

The timing of the payment of the financial contributions identified above were to be the subject of negotiation during the drafting of the Agreement with the agreed timing included within the terms of the Section 106 Agreement.

On completion of the required Agreement, the Corporate Director Communities was granted plenary powers to issue notice of the granting of an outline planning

permission subject to the conditions contained in the Committee Report. The applicant's agent was advised of the resolution and requested to confirm the applicant's willingness to enter the required legal agreement.

No agreement was received from the applicant's agent but in June, 2016, a consultant acting for the developers contacted the Section 106 Officer advising that he had been appointed to review the viability of the proposal. Subsequently a viability appraisal demonstrating that, due to the level of costs involved in developing the land combined with the Section 106 obligations required by the Authority, the development was not viable. A further appraisal appeared to demonstrate that even with the removal of the proposed Section 106 contributions, the developer's profit margin would be lower than the average developer profit achieved on normal development sites. Initially, the agent requested the Council to review the proposed obligation.

The Council appointed an independent assessor to review the viability appraisal submitted by the developer. Whilst, this independent review identified a number of concerns relating to the land valuation, the assessment of the area capable of development as opposed to the overall site area and the quantum of development proposed by the application, it also concluded that the viability of the site was compromised. In light of the foregoing, the advice of the independent assessor on the reduced obligations (in respect of affordable housing, the education contribution and the active travel element) was sought. Two scenarios were considered :-

Appraisal 1 : 5% affordable housing, a 50% of the Active Travel contribution

Appraisal 2 : 5% affordable housing; a 50% Active Travel contribution and 50% Education contribution.

The advice confirmed that the profit on cost needs to be at a minimum of 20% and that the land values needs to be a minimum of £300,000.00 per acre. The sensitivity analysis that accompanied the appraisals highlighted that there would need to be an increase in sales value of approximately 7% in respect of Appraisal 1 or just under 6% increase in sales values for Appraisal 2. In light of the foregoing, it is considered that it is appropriate to revise the head of terms proposed to be included within the Section 106 Agreement.

Following further exchanges between the applicant's agent and the case officer, the consortium requested that the Heads of Terms be amended to:-

- Provide 5% of the residential units as affordable housing units with the type of units, location within the site, affordable tenure, transfer price and timescale for the transfer to a Registered Social Landlord agreed with the Council.
- Provide a 50% financial contribution in accordance with the formula and cost guidance contained in Supplementary Planning Guidance 16 towards the provision of additional nursery and primary school places.
- Provide outdoor recreation space in accordance with Policy COM11 of the Bridgend Local Development Plan with arrangements for future management and maintenance to be agreed in writing with the Council.

- Provide £8,000.00 to fund necessary Road Traffic Orders and signage to achieve appropriate speed restrictions within the development site.
- Either provide a financial contribution of £208,000.00 towards the provision of an active travel route from the application site to the signalised junction of the A473 with the Bridgend Retail Park or alternatively provide the route in accordance with a scheme agreed with the Local Planning Authority in conjunction with the Highway Authority.
- Provide internal road infrastructure through the development site up to the boundary line of:
 - (i) The adjoining land to the east of the application site owned by the Local Planning Authority; and
 - (ii) A point that is 0.5 metres away from the application site boundary with the land to the west owned by South Wales Police.

It is noted that these terms are those considered by the assessor as Appraisal 2 referred to above and it is therefore considered reasonable, in light of the viability issues, to agree to amend the Heads of Terms.

Furthermore, the process of redeveloping the former depot element of the wider mixed use allocation within the Local Development Plan, immediately to the east of the application site, is at a relatively advanced stage and there is a high level of certainty that this will be carried forward for residential use.

The extension of the access through the site and into this land will remove the need to establish an additional, separate access and will provide a much larger developable area whilst removing a non-conforming industrial use. The advantage is that a larger part of this allocated area will be developed strategically in accordance with the aims of the adopted Local Development Plan and master plan.

It is therefore considered that, whilst the reduced contributions is not an ideal situation, this must be looked at in terms of the overall redevelopment of the allocated land and needs to be balanced against the provision of serviced access into the adjoining site. It is considered that the negotiated outcome will assist in facilitating the provision of a crucial part of the infrastructure to the benefit of the regeneration of this area in the wider interest and will not prevent future development from focusing on the provision of other contributions in terms of affordable housing and education.

In light of the foregoing the Report contained the following recommendation:-

That the terms of the required Section 106 be amended to:-

- Provide 5% of the residential units as affordable housing units with the type of units, location within the site, affordable tenure, transfer price and timescale for the transfer to a Registered Social Landlord agreed with the Council.
- Provide a 50% financial contribution in accordance with the formula and cost guidance contained in Supplementary Planning Guidance 16 towards the provision of additional nursery and primary school places.

- Provide outdoor recreation space in accordance with Policy COM11 of the Bridgend Local Development Plan with arrangements for future management and maintenance to be agreed in writing with the Council.
- Provide £8,000.00 to fund necessary Road Traffic Orders and signage to achieve appropriate speed restrictions within the development site.
- Either provide a financial contribution of £208,000.00 towards the provision of an active travel route from the application site to the signalised junction of the A473 with the Bridgend Retail Park or alternatively provide the route in accordance with a scheme agreed with the Local Planning Authority in conjunction with the Highway Authority.
- Provide internal road infrastructure through the development site up to the boundary line of:
 - (iii) The adjoining land to the east of the application site owned by the Local Planning Authority; and
 - (iv) A point that is 0.5 metres away from the application site boundary with the land to the west owned by South Wales Police."

In accordance with the resolution and with regard to the question of Education Provision, it has been confirmed that the Council has recently completed a strategic review to establish the priorities for investment within Band B of the School Modernisation Programme. The Band B Programme runs from 2019 to 2024. Pupil yield resulting from the Parc Afon Ewenni development site has been factored into that review.

It has been established that the projected pupil yield from the development in itself is insufficient in number to require a primary school to purely serve the development site. It has also been established that primary schools within the area will have insufficient capacity to accommodate any additional pupils from the development site. Therefore, there is a need to increase provision in order for the Council to fulfil its statutory duty in relation to school places for the area. The demand for places in this area and the wider County Borough will be considered by Cabinet in due course as part of a wider report regarding Band B of the School Modernisation Programme.

In the event that Cabinet approval is received to progress a scheme to create additional places during Band B, the Council will need to adhere to Welsh Government's five case business model process, determining options for consideration and evaluation. This process includes the project team developing a long list of options, working through the feasibility of each option, before taking forward a short list of options leading to the preferred option. A consultation process would then be undertaken under the School Organisation Code. An initial outline project schedule indicates that the consultation process would be completed by early 2020.

Should the S106 education contribution for the Parc Afon Ewenni Development be reduced, the Council will need to determine how this anticipated shortfall in funding could be met corporately. Section 106 contributions have been used as part of the Council's 50% contribution to the School Modernisation programme and not securing the full amount of planning obligation could result in a funding gap. In this instance, the developer has now confirmed that the full education contribution will be met.

Since the original report to Committee, a holding objection from South Wales Police and Crime Commissioner as adjoining landowner was submitted. The objection acknowledged that, whilst South Wales Police did not object in principle to the redevelopment of the application site, it was concerned that the proposed revised Heads of Terms would be procedurally unfair. For clarification, the issue relates to the final suggested obligation, which, in the view of South Wales Police, would not treat the owners of the land to the west of the application site in the same manner as the owners of the land to the east.

It was highlighted that redevelopment proposals in respect of the land to the east have reached a relatively advanced stage thereby providing the applicant with a high level of certainty that a scheme of residential development will be progressed. With regard to the land to the west (the Police land), however, there is not currently the same level of certainty for the developer and therefore the costs associated with the proposed obligation would be borne on a more speculative basis.

Further consideration of this proposed obligation has now been undertaken including assessing this element against the Community Infrastructure Levy (Amendment) Regulations 2011. These Regulations impose three tests against which Local Planning Authorities should assess any proposed imposition of a lawful planning obligation, namely:-

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

On reflection it is now acknowledged that, whilst the provision of an internal road system would be beneficial to achieving a comprehensive and integrated development of the wider Local Development Plan allocation, which includes the application site together with the parcels of land on its eastern and western boundaries, such a requirement would not meet the above mentioned tests when applied to the application site alone. In these circumstances, it is recommended that the Heads of Terms be further revised to omit this element particularly as the landowners of both adjoining land parcels would have the opportunity to negotiate the provision of appropriate linkages out with the planning process. The Police and Crime Commissioner was invited to withdraw the holding objection on the basis that the Heads of Terms would be amended in this manner. The applicant's agent was advised of the intention to further amend the Heads of Terms for the S106 Agreement to omit the obligation in respect of the internal infrastructure linkages and has, responded that, on this basis, the developers would provide the full contribution in respect of the provision of additional nursery and primary school places.

In a letter received from a Solicitor acting on behalf of South Wales Police, the amendment to the Heads of Terms has been acknowledged but an objection to the application is made on the following grounds:-

1. The Parc Afon Ewenni Regeneration Area Masterplan Framework and Delivery Strategy (PAE Masterplan) envisages development, which includes access solutions which were intended to link into the wider allocations within

the Local Development Plan. In the absence of the linkages, the development would not accord with the Masterplan.

2. The Police and Crime Commissioner (Commissioner) expected the Council to bring the approach set out in the Masterplan to fruition and considers if the current application is assessed on its individual merits without due regard to the Masterplan, this could adversely affect the future development potential of South Wales Police Land
3. In addition to the PAE Masterplan, the Bridgend Local Development Plan allocates an area, which includes the application site for regeneration and mixed use schemes. The allocation indicates that implementation should be in accordance with a master plan or development brief and or appropriate planning/highway agreements. Assurance that the indicative layout for the application site will be compatible with the land uses proposed within the above documents is now required.
4. Policy PLA8 of the LDP is also applicable to the application and this requires the adoption of a masterplan and land owner agreements that would effectively link the various elements of the development. The Commissioner therefore considers that this demonstrates that the application cannot be determined independently and further that removal of the highways infrastructure obligations does not address the delivery of the necessary highway connections.
5. The Commissioner also considers that the Council has not taken into account potential future development on the South Wales Police land as no provision is included in the Heads of Terms for noise abatement measures in respect of the Firing Range, Kennels and Stables. It is suggested that these operations may require further development and consolidation in order to meet operational policing needs. In light of the foregoing, it is considered that a no build restriction would need to be applied to land in proximity to these uses.

It is highlighted that the above objection letter, which questions the fundamental acceptability of the proposed layout, has been received well beyond the expiration of the 21 day period given to neighbouring consultees (from 18 June 2015). Notwithstanding this procedural issue, the following explanation of each of the reasons for objection is provided, given that many current Members of the Committee were not involved in the original Committee resolution in 2016.

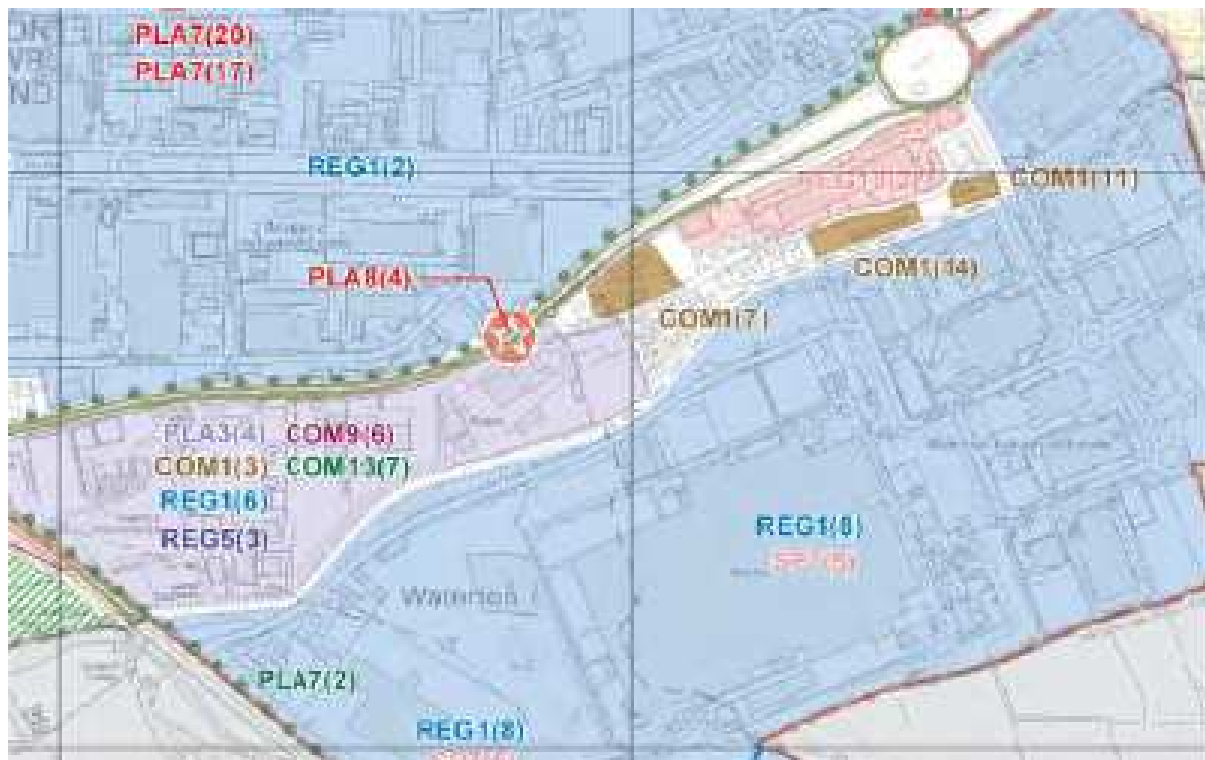
For clarification of the status of the PAE Masterplan, it was considered by Committee in 2011 and it was agreed that, following public consultation, it could be adopted as development control guidance. However, this consultation process was not undertaken, being superseded, to a degree, by the adoption of the Bridgend Local Development Plan, which allocated the area for regeneration and mixed use schemes (PLA3(4) refers). The way that can be attached to this document is, therefore, limited. Whilst these issues have been addressed in the original report considered by Committee in 2016, it can be seen from the comparison of the indicative layout with the Development Framework Plan below, the proposed development is fully compatible with the Masterplan and the allocations within the

Bridgend Local Development Plan. Notwithstanding the status of the document, the comprehensive development of the wider site can still be achieved.

Master Plan Extract



Bridgend Local Development Plan Extract



Indicative Layout Plan



On the basis of the above, it is considered that the Commissioner's objections as outlined in paragraphs 1-4 above are unfounded.

With regard to the final issue in respect of noise, it is highlighted that the penultimate paragraph of the original report to Committee in 2016 addressed concerns in respect of noise emanating from the adjoining South Wales Police land by requiring the imposition of a condition necessitating further surveys and mitigation measures. Condition 3 (proposed to be attached to the planning permission) would satisfactorily safeguard the existing South Wales Police operations. Any future development to these facilities by the Police Authority would need to be the subject of appropriate planning applications, which would be assessed on their individual merits against the adopted Local Development Plan policies and National policy.

In conclusion and notwithstanding the objections raised by the Police and Crime Commissioner, the revised Heads of Terms outlined below are recommended to be accepted.

RECOMMENDATION

That the terms of the required Section 106 be amended to:-

- Provide 5% of the residential units as affordable housing units with the type of units, location within the site, affordable tenure, transfer price and timescale for the transfer to a Registered Social Landlord agreed with the Council.
- Provide a financial contribution in accordance with the formula and cost guidance contained in Supplementary Planning Guidance 16 towards the provision of additional nursery and primary school places.
- Provide outdoor recreation space in accordance with Policy COM11 of the Bridgend Local Development Plan with arrangements for future management and maintenance to be agreed in writing with the Council.
- Provide £8,000.00 to fund necessary Road Traffic Orders and signage to achieve appropriate speed restrictions within the development site.
- Either provide a financial contribution of £208,000.00 towards the provision of an active travel route from the application site to the signalised junction of the A473 with the Bridgend Retail Park or alternatively provide the route in accordance with a scheme agreed with the Local Planning Authority in conjunction with the Highway Authority.

MARK SHEPHARD
CORPORATE DIRECTOR COMMUNITIES

Background Papers

None